

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAROL CHAPPELL,

Plaintiff,

-against-

KIRSCHENBAUM & PHILLIPS, P.C.,

Defendant.

Case no. 1:11-CV-0101 (LEK/DRH)

**VERIFIED COMPLAINT and DEMAND
FOR JURY TRIAL**

NOW COMES Plaintiff, Carol Chappell ("Plaintiff"), by and through her attorneys, Krohn & Moss, Ltd., for her Verified Complaint against Defendant, Kirschenbaum & Phillips, P.C. ("Defendant"), alleges as follows:

Nature of the Action

1. This action is brought by Plaintiff pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

Parties

2. Plaintiff is a natural person residing in High Falls, Ulster County, New York.

3. Plaintiff is allegedly obligated to pay a debt and is a consumer as defined by 15 U.S.C. § 1692a(3).

4. Defendant is a law firm having its principal place of business located in Levittown, Nassau County, New York.

5. Defendant is a debt collector as defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

Jurisdiction and Venue

7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy.”

8. Because Defendant has offices and conducts business in the state of New York, personal jurisdiction is established

9. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

Factual Allegations

10. Defendant is attempting to collect a debt from Plaintiff on behalf of the original creditor, Palisades Collection, LLC / Chase Manhattan Bank with an account number ending in 4251 (Defendant’s File Number C605359).

11. Plaintiff’s alleged debt owed to Palisades Collection, LLC / Chase Manhattan Bank arises from transactions for personal, family, and household purposes.

12. On January 23, 2008, Plaintiff’s counsel faxed a cease and desist letter to Defendant (Plaintiff’s letter to Defendant and fax confirmation are attached as Group Exhibit A).

13. On January 23, 2008, Plaintiff’s counsel faxed a notice of representation letter to Defendant (Plaintiff’s letter to Defendant and fax confirmation are attached as Group Exhibit A).

14. Despite receiving Plaintiff’s counsel’s letter (Exhibit A), Defendant communicated with Plaintiff after January 23, 2008, in an attempt to collect a debt (Defendant’s

letter to Plaintiff dated November 22, 2010, is attached as Exhibit B).

CLAIM FOR RELIEF

15. Defendant's violations of the FDCPA include, but are not limited to, the following:

- a) Defendant violated §1692c(a)(2) of the FDCPA by communicating with Plaintiff even though Defendant knew Plaintiff was represented by an attorney.
- b) Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after Defendant received Plaintiff's cease and desist letter.

16. Plaintiff is entitled to her attorney's fees and costs incurred in this action.

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

- (1) Statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k;
- (2) Reasonable attorneys' fees, costs pursuant to 15 U.S.C. § 1692k; and
- (3) Awarding such other and further relief as may be just, proper and equitable.

Dated: January 27, 2011

KROHN & MOSS, LTD.

By: /s/ Adam T. Hill
Adam T. Hill (SBN:515619)
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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, Carol Chappell, hereby demands a jury trial in this matter.

VERIFICATION

STATE OF NEW YORK)

COUNTY OF ULSTER)

Plaintiff, CAROL CHAPPELL, states as follows:

- 1 I am the Plaintiff in this civil proceeding;
- 2 I have read the foregoing Verified Complaint prepared by my attorneys and I believe that all of the facts contained therein are true and correct, to the best of my knowledge, and formed after reasonable inquiry;
- 3 I believe that this civil Complaint is well ground in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law;
- 4 I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
- 5 I have filed this Complaint in good faith and solely for the purposes set forth in it;
- 6 Each and every exhibit I have provided to my attorneys, which has/have been attached to this Complaint, is/are true and correct copy(s) of the original(s); and
- 7 Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated the exhibit(s), except that some of the attached may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, CAROL CHAPPELL, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 1/5/2011


CAROL CHAPPELL